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C O N F I D E N T I A L SECTION 01 OF 03 KYIV 000361

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SUBJECT: UKRAINE: COALITION PUBLISHES, SEEKS TO AMEND,  
CABMIN LAW WITHOUT PRESIDENTIAL BUY-IN

REF: A. KYIV 0225

1B. 06 KYIV 4435

1C. KYIV 0135

Classified By: Ambassador for reasons 1.4(a,b,d).

11. (SBU) Summary. The controversial Law on the Cabinet of Ministers, which tips the balance of power toward the Prime Minister at the President's expense, continues to be a political football on Kyiv playing fields. The February 2 decision by the Rada (parliament) and Government to officially publish the law as passed January 12, thereby brought it into force, without meeting President Yushchenko's calls for compromise or acknowledging his claim to have vetoed the law. Yushchenko has appealed the law to the Constitutional Court, both on substantive and procedural grounds. He requested that the Court give the appeal "urgent status", which would speed up the timeline for issuing a ruling. When the Rada came back into session February 6, one of its first acts was to consider a bill with amendments to the law introduced by Regions MP Yuriy Miroshnychenko who claimed they were based on Yushchenko's requested changes for the law; the bill was approved in its first reading on February 9 and was referred to committee. The President's representatives have refuted Miroshnychenko's claims, saying that Regions wanted to give the air of being cooperative, while amending the law in ways that do not satisfy presidential concerns.

12. (C) Comment. Despite talk from the President and Prime Minister's sides in January and early February that a compromise was desired, the Rada coalition chose to pass the law as it was, put it into force, and then unilaterally amend it, rather than cooperate on the law early on and hold a new vote, or work together on amending the text. It seems to be a point of pride with the coalition to demonstrate that Yushchenko's second veto held no legal validity and that they fully control legislation of laws (reftel A). Nonetheless, if the coalition moves ahead in amending the law "unilaterally," Yushchenko still can veto it -- the unknown is whether Tymoshenko might be convinced to vote again for an override. While the Constitutional Court deliberates, the new unamended CabMin law remains in effect and for at least the near-term, gives Prime Minister Yanukovych a leg up on President Yushchenko. End summary and comment.

Who Did What When? A CabMin Law Timeline

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13. (SBU) The path that the controversial legislation has followed has been complicated by political machinations, constitutional challenges, and pending judicial interpretations. In the fall of 2006, two drafts of the bill were introduced in the Rada--one written by the CabMin and the other by the Presidential Secretariat (reftel B). The CabMin's version was adopted by the Rada on December 21,

¶2006. Yushchenko vetoed the bill seven days later. On January 12, 336 Rada MPs voted to override the veto. However, due either to technical error or conscious intent, the text of the law approved during the veto override in January differed from the text of the original law, thereby technically making it a different piece of legislation under Ukrainian law. On January 19, Yushchenko again vetoed the law, arguing he was vetoing a second--and different--CabMin law. The Presidential Secretariat also obtained a questionable ruling from a municipal court judge in Mukacheve, the hometown of Presidential Secretariat Head Viktor Baloha, prohibiting Speaker Moroz from promulgating the law (note: the judge was subsequently fired). After weeks of hemming and hawing and ignoring the question of Yushchenko's second veto, Speaker Moroz and the Cabinet first unofficially promulgated the law on the internet and finally published it officially in the Rada and Government's designated periodicals on February 2, bringing the law into force.

Yushchenko's team: Amending the Law is No Compromise

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¶14. (SBU) During the Rada recess, Speaker Moroz signaled recognition that some clauses in the law in fact were in conflict with Constitutional norms, suggesting that the bill would be amended in the session starting February 6. Regions MP Yuriy Miroshnychenko introduced a bill of proposed amendments to the CabMin law, which he argued incorporated the eight principles Yushchenko requested for changes in the law. On February 9, Miroshnychenko's bill passed its first reading with 240 votes in favor and was sent to committee. The majority of Yuliya Tymoshenko's BYuT opposition deputies, the critical bloc in the override of the President's veto of the original legislation, abstained from the vote, implying

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that their future stand on the amendments was open to negotiation. MPs from the pro-presidential Our Ukraine faction Yuriy Kluchkovskiy and Anatoliy Matviyenko claimed the amendments did not meet Yushchenko's concerns. Presidential representative to the Rada Roman Zvarych said that the Rada's adoption of Miroshnychenko's amendments reflected the coalition's desire to seem like it was cooperating with Yushchenko without actually cooperating. Yushchenko himself said on February 13 that Miroshnychenko's amendments were not worth commenting on because they did not bring any balance or harmonization to the current political situation.

¶15. (C) Comment. Since the bill on amending the law has only been passed in its first reading, the possibility remains that it could be further amended in committee before a second vote. If Regions wanted to compromise, the committee in charge of the bill--chaired by Regions MP Tikhonov--could address Yushchenko's concerns, but this does not seem likely.

Yushchenko's repeated public and private statements in the past month that he had reached agreement with Yanukovych to modify the law have proved each time to be wishful thinking, as Regions repeatedly pushed the ball farther down the road. Even so, Yushchenko still has his veto and does not have to accept the amendments as passed -- unless Yuliya Tymoshenko makes another tactical decision to join with the Government and vote for an override. Interestingly, the timing of the amendments was not universally approved of by the coalition. Socialist MP Yaroslav Mendus, Speaker Moroz's right-hand man, said that the Rada should not have examined Miroshnychenko's bill until the Constitutional Court (CC) ruled on the original law; nonetheless Regions pushed the first reading of the amendments bill through. End comment.

Yushchenko Turns to Constitutional Court, Again

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¶16. (SBU) Adding to the already overburdened CC docket, Yushchenko appealed the CabMin law on both substantive and

procedural grounds. Knowing that the CC has more than 80 cases piled up (in large part due to the 10 months it went without judges in 2005-2006), Yushchenko asked the Court to give this appeal "urgent status". According to the constitution, the law on the CC, and the CC's rules of procedure, if a request for urgency is made, a judge or panel of judges will consider the request and then the whole CC will vote on whether to grant the urgent status. Once the status is granted, the Court must rule within 30 days. However, there is no time limit for how long the CC has to decide whether or not the case is urgent. Given the bureaucratic procedures of the CC, it could be a slow process. Presidential representative to the Court Volodymyr Shapoval said publicly on February 12 that a panel of judges was considering the request.

#### Remaining Contentious Clauses and Miroshnychenko Amendments

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¶7. (C) Ref C outlines the key clauses of the CabMin law, especially those that may be unconstitutional in reducing the powers of the presidency and National Security and Defense Council. While Miroshnychenko's amendments are aimed at some of these articles of the law, they do not actually appear to improve the legislation or to meet Yushchenko's expressed concerns. The main issues of contention are:

--Nomination of the Foreign and Defense Ministers. The current law says that if the President does not nominate the two ministers within a 15-day timeframe, the Rada coalition has the right to name them. This seems to be the most clear violation of the constitution, which explicitly gives the right of nomination to the President. Miroshnychenko's amendment does not remove the 15-day limit, but it adds the clause that if the Cabinet has 2/3 of its ministers approved, then the Cabinet is considered operational. We believe that, given the likelihood that eventually the CC will strike down the 15-day limit, this language is an attempt to avoid a scenario, described by some in Our Ukraine, in which, if a new government were formed, Yushchenko could refuse to name a new FM or DefMin and use that as a pretext to declare the Cabinet not formed and dismiss the Rada.

--Nomination of the Prime Minister. The law says that if the President refuses to submit the name of the PM suggested by the coalition to the Rada for a formal vote within 15 days, the coalition can make the nomination itself. Miroshnychenko did not amend this article.

---Dismissal of Ministers. Article 19 of the existing law gives sole dismissal authority to the PM, eliminating any possible differentiation between the dismissal procedures

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used against the two ministers nominated by the President and the rest by the coalition/PM. Miroshnychenko's amendment clarifies that the President and the Rada majority coalition can also fire the FM/DM; the coalition would have the right to fire any minister.

--Deputy Ministers. Article 23 gives the Cabinet the right to appoint and dismiss all deputy ministers, which has been another point of contention; Yushchenko had argued that the President, as the guarantor of national security, should appoint deputy ministers in the Foreign, Defense, and Interior Ministries. Miroshnychenko's amendments would allow the President to consult on nominations for the Foreign and Defense Ministries.

--Directives to the Cabinet. Article 29 states that officials of the NSDC, Presidential Secretariat, and other agencies formed by the President are not allowed to give orders to the Cabinet of Ministers or members of the CabMin or interfere in their activities. However, article 207 of the Constitution states that the NSDC controls the activity of bodies of executive power in the sphere of national

security and defense. It is our understanding that the constitution empowers the NSDC to issue direction to the CabMin within its competencies; article 29 of the CabMin law would thus seem to violate the constitution. Miroshnychenko did not amend this article.

18. (C) Bio Note: Miroshnychenko is an interesting figure with an ever rising profile in both the Rada and the media. The 36-year-old businessman, born in Russia, is serving his first term in the Rada. During the 2004 presidential elections, he formed a youth movement that was meant to compete with the orange youth party Pora, a move which reportedly gained him his spot on the 2006 Regions party list (119). In the past year, he has made an effort to involve himself in a variety of activities that bring him in contact with the U.S. Embassy--he sits on the US interparliamentary group and the Gongadze commission, and has been trying to rekindle a environmental project that the Embassy ended years ago--but he does not always seem constructive. He claims that an Embassy-organized November 2006 trip to Brussels opened his eyes to NATO, and his public comments since have been cautiously constructive, but Rada colleagues tell us privately that he remains strongly anti-NATO. Articulate and energetic, he seems poised to replace recently deceased MP Yevhen Kushnaryov as the provocateur of Regions, writing hard-line legislation that the party sometimes uses as its starting off point for negotiations with Yushchenko. For example, he recently proposed legislation which would abolish the position of NSDC Secretary.

19. (U) Visit Embassy Kyiv's classified website:  
[www.state.sgov.gov/p/eur/kiev](http://www.state.sgov.gov/p/eur/kiev).  
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